

No. 45766-1-II

---

---

**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

V.

DEBRA DOERING, APPELLANT

---

Appeal from the Superior Court of Mason County  
The Honorable Toni A. Sheldon, Judge

No. 13-1-00131-4

---

**BRIEF OF RESPONDENT**

---

MICHAEL DORCY  
Mason County Prosecuting Attorney

By  
TIM HIGGS  
Deputy Prosecuting Attorney  
WSBA #25919

521 N. Fourth Street  
PO Box 639  
Shelton, WA 98584  
PH: (360) 427-9670 ext. 417

## TABLE OF CONTENTS

A. <u>STATE'S COUNTER-STATEMENTS OF ISSUE PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR</u> .....	1
B. <u>FACTS AND STATEMENT OF CASE</u> .....	1
C. <u>ARGUMENT</u> .....	3
1) <u>Standard of Review</u> .....	3
2) <u>It is indisputable that a seizure occurred in this case, but         the seizure was lawful because the officers observed         Doering committing the crime of trespassing in their         presence</u> .....	4
a) Officers lawfully stopped the Jeep and contacted its occupants when they saw the Jeep traveling on a private road that was closed to the public.....	4
b) Officers were justified in asking Doering for her identifying when they detained her after observing her commit the crime of trespass in the second degree in their presence.....	8
c) Officers were aware of at least one gun in the Jeep, and they were concerned that there may be other weapons. When officers observed Doering making furtive movements toward the rear of the Jeep, officers were justified in conducting a pat-down search for weapons.....	9
3) <u>Evidence of possession of methamphetamine was         discovered in open view from outside of the Jeep by         looking through the windows</u> .....	11
D. <u>CONCLUSION</u> .....	13

State's Response Brief  
Case No. 45766-1-II

Mason County Prosecutor  
PO Box 639  
Shelton, WA 98584  
360-427-9670 ext. 417

## TABLE OF AUTHORITIES

Page

### Table of Cases

#### State Cases

<i>State v. Belieu</i> , 112 Wn.2d 587, 773 P.2d 46 (1989).....	10
<i>State v. Collins</i> , 121 Wn.2d 168, 847 P.2d 919 (1993).....	10
<i>State v. Garvin</i> , 166 Wn.2d 242, 207 P.3d 1266 (2009).....	3, 4, 10
<i>State v. Glover</i> , 116 Wn.2d 509, 806 P.2d 760 (1991).....	7, 9, 11
<i>State v. Harrington</i> , 167 Wn.2d 656, 222 P.3d 92 (2009).....	10, 11
<i>State v. Khounvichai</i> , 149 Wn.2d 557, 69 P.3d 862 (2003).....	12
<i>State v. Lohr</i> , 164 Wn. App. 414, 263 P.3d 1287 (2011).....	3, 5
<i>State v. Parker</i> , 79 Wn.2d 326, 485 P.2d 60 (1971).....	6
<i>State v. Rose</i> , 128 Wn.2d 388, 909 P.2d 280 (1996).....	12
<i>State v. Todd</i> , 78 Wn.2d 362, 474 P.2d 542 (1970).....	6

State's Response Brief  
Case No. 45766-1-II

Mason County Prosecutor  
PO Box 639  
Shelton, WA 98584  
360-427-9670 ext. 417

**Federal Cases**

*Terry v. Ohio*,  
392 U.S. 1, 88 S. Ct. 1868 , 20 L. Ed. 2d 889 (1968)..... 7, 10

*Wilson v. Porter*,  
361 F.2d 412 (9th Cir.1966) ..... 10

**Statutes**

RCW 10.31.100 ..... 6, 9, 11

RCW 10.31.100(1)..... 6

RCW 9A.52.080..... 5, 9, 11

**Rules**

CrR 3.6..... 3

A. STATE'S COUNTER-STATEMENTS OF ISSUES  
PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

- 1) Standard of Review
- 2) It is indisputable that a seizure occurred in this case, but the seizure was lawful because the officers observed Doering committing the crime of trespassing in their presence.
  - a) Officers lawfully stopped the Jeep and contacted its occupants when they saw the Jeep traveling on a private road that was closed to the public.
  - b) Officers were justified in asking Doering for her identifying when they detained her after observing her commit the crime of trespass in the second degree in their presence.
  - c) Officers were aware of at least one gun in the Jeep, and they were concerned that there may be other weapons. When officers observed Doering making furtive movements toward the rear of the Jeep, officers were justified in conducting a pat-down search for weapons.
- 3) Evidence of possession of methamphetamine was discovered in open view from outside of the Jeep by looking through the windows

B. FACTS AND STATEMENT OF THE CASE

On March 16, 2013, at 11:00 at night, Doering was a passenger in a Jeep Cherokee as the Jeep traveled along Green Diamond 800 Road, which is a private road in Mason County, Washington. RP 4-6. The road

State's Response Brief  
Case No. 45766-1-II

Mason County Prosecutor  
PO Box 639  
Shelton, WA 98584  
360-427-9670 ext. 417

was closed to public access during hours of darkness. RP 4-6. Officers Jewett and Smith were patrolling the Green Diamond 800 Road specifically to contact trespassers who were unlawfully traveling the road during hours of darkness. RP 4-5.

Officers Jewett and Smith came upon the Jeep that Doering occupied. RP 4-5. Because the road was closed and the occupants were trespassing on Green Diamond property, the officers stopped the Jeep. RP 6.

The officers' initial contact with the Jeep occupants led to the discovery that the driver had a suspended driver's license. RP 6. Officers learned that there was a shotgun in the vehicle. RP 7. Doering's driver's license was valid; so officers obtained the driver's consent to let Doering drive the vehicle away. RP 7.

Subsequent events, as explained in the argument section below, led to pat-down searches for weapons of both the driver and of Doering. RP 7-8. After Doering was removed from the vehicle for a pat-down search, from outside of the Jeep, Officer Smith noticed a methamphetamine pipe in open view inside the Jeep. RP 9. Further observation led to the discovery of a bag of methamphetamine that was also in open view. RP 10.

State's Response Brief  
Case No. 45766-1-II

Mason County Prosecutor  
PO Box 639  
Shelton, WA 98584  
360-427-9670 ext. 417

After the drugs were observed from outside the Jeep in open view inside the Jeep, the officers asked both the driver and Doering for consent to search the Jeep. Both Doering and the driver consented to the search. RP 10-13; Pretrial Ex. 9; Pretrial Ex. 10. Officers recovered the methamphetamine. RP 13.

Based upon these facts Doering was charged with unlawful possession of a controlled substance. CP 61. Doering brought a pretrial motion to suppress evidence pursuant to CrR 3.6. CP 55-60. The trial court denied Doering's motion. CP 41; CP 45-47. Doering now appeals the trial court's ruling denying her CrR 3.6 motion to suppress evidence.

C. ARGUMENT

1) Standard of Review

When reviewing a trial court's denial of a CrR 3.6 suppression motion, the reviewing court examines the trial court record to determine whether there is substantial evidence to support the trial court's findings of fact and whether the findings of fact support the trial court's conclusions of law. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). Unchallenged findings of fact are considered verities on appeal. *State v.*

State's Response Brief  
Case No. 45766-1-II

Mason County Prosecutor  
PO Box 639  
Shelton, WA 98584  
360-427-9670 ext. 417

*Lohr*, 164 Wn. App. 414, 418, 263 P.3d 1287 (2011). The trial court's findings of fact are reviewed for substantial evidence, but the trial court's conclusions of law are reviewed de novo. *Garvin* at 249.

2) It is indisputable that a seizure occurred in this case, but the seizure was lawful because the officers observed Doering committing the crime of trespassing in their presence.

a) Officers lawfully stopped the Jeep and contacted its occupants when they saw the Jeep traveling on a private road that was closed to the public.

Officer Smith is an enforcement officer with the State Department of fish and Wildlife. RP 2. His duties include general law enforcement throughout the State, including trespassing. RP 3. On March 16, 2013, he was on duty and was patrolling Green Diamond lands specifically in regard to trespassers. RP 4. At the pretrial suppression hearing, Officer Smith testified as follows:

That night we were actually on Green Diamond -- on an emphasis put on by Green Diamond to enforce their nighttime closure of their roadways, and we were informed to stop vehicles driving on their roads after the hours of darkness.

RP 4. Officer Smith further testified that he and another officer, Officer Jewett, were in separate vehicles and were travelling through Green

State's Response Brief  
Case No. 45766-1-II

Mason County Prosecutor  
PO Box 639  
Shelton, WA 98584  
360-427-9670 ext. 417



Diamond property on the Green Diamond 800 Road at about 11:00 at night when they were met by an oncoming vehicle. RP 4-5. Green Diamond Road is posted as a closed during hours of darkness. RP 4, 15.

Officer Jewett stopped the vehicle, and Officer Smith assisted. RP 5-6. The stop occurred because the occupants of the vehicle were trespassing on Green Diamond roads during hours of darkness. RP 6. Officer Smith saw that the vehicle, a Jeep Cherokee, contained a driver and one passenger. RP 6. Doering was the passenger. RP 6.

The crime of criminal trespass in the second degree occurs when a person “knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree.” RCW 9A.52.080. In the instant case, Green Diamond 800 Road was closed to the public during hours of darkness; so, when the officers saw the Jeep Cherokee traveling down Green Diamond 800 Road during hours of darkness, the officers had probable cause to believe that the crime of trespassing was being committed in their presence. RP 4-6, 15; RCW 9A.52.080. There is no distinction or exception made merely because one of the occupants is a passenger rather than a driver. *Id.* Thus, because the crime of trespass was being committed in the officers’ presence, the officers had lawful authority to arrest of the occupants of the jeep, to

State’s Response Brief  
Case No. 45766-1-II

Mason County Prosecutor  
PO Box 639  
Shelton, WA 98584  
360-427-9670 ext. 417

include the passenger. RCW 10.31.100; see also RCW 10.31.100(1) (granting specific authority to arrest for trespass even when crime is not committed in the officer's presence).

Proof beyond a reasonable doubt is not required to in order to validate an arrest. *State v. Parker*, 79 Wn.2d 326, 328-29, 485 P.2d 60 (1971). Instead, "[p]roper cause for arrest has often been defined to be a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty." *State v. Todd*, 78 Wn.2d 362, 365, 474 P.2d 542 (1970) (further citation omitted). Thus, the mere possibility that one of the occupants might later offer some valid excuse or permission to be on Green Diamond 800 Road during hours of darkness should not work to invalidate the initial arrest. *Id.*

Doering contends that the road "was open as a flood route during the time of Ms. Doering's seizure." Br. of Appellant at 9. But this contention is in dispute. RP 16. Doering contends that she "presented uncontested evidence that the nearby river was on a flood watch on the night the car was stopped." Br. of Appellant at 9. But the evidence that Doering cites to on this point is the co-defendant's testimony that he seen a floor warning from a TV news station. RP 27. And, the point actually

State's Response Brief  
Case No. 45766-1-II

Mason County Prosecutor  
PO Box 639  
Shelton, WA 98584  
360-427-9670 ext. 417

was contested, as Officer Smith testified that there was not a flood event on March 16 because he “actually looked it up on the USGS website and it was below flood stage that day, the day before, and the day after.” RP 16.

But even if one of the occupants of the Jeep might later offer a valid excuse, the State contends that the officers were authorized to conduct a Terry stop to investigate the crime of trespassing in the second degree. “A *Terry* stop is justified if the officer can ‘point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’” *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 760 (1991), quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1879, 20 L. Ed. 2d 889 (1968) (further citations omitted). In the instant case, Officer Smith was patrolling Green Diamond 800 Road for the specific purpose of contacting trespassers who were on the road during hours of darkness when the road was closed to the public. RP 4. The occupants of the Jeep Cherokee were on the road during hours of darkness. RP 4-6. It follows from these facts and the totality of the circumstances that the officers had a reasonable and articulable suspicion that the occupants of the Jeep Cherokee were trespassing.

- b) Officers were justified in asking Doering for her identifying information when they detained her after observing her commit the crime of trespass in the second degree in their presence.

Immediately upon contact with the occupants of the Jeep Cherokee, the officers asked both occupants to provide identifying information. RP 6. Doering contends that “the officer appears to have asked Ms. Doering for her information in order to assess whether she could drive the car.” Br. of Appellant at 11. But the State contends that it appears that immediately upon contact with the Jeep, officers asked both occupants for their identity because both occupants were committing the crime of trespass in the officers’ presence. RP 6-7. Thus, Doering was already seized when officers asked her for her identifying information. RP 6.

It was during this initial process of identifying both defendants that the officers learned that the driver of the Jeep had a suspended driver’s license. RP 6. The officers also learned, from some source not fully explained by the record, that Doering had a valid driver’s license. RP 6-7. So Officer Smith obtained the driver’s permission to allow Doering to drive away the vehicle. RP 7. But none of these facts negates the fact that Doering was properly detained for investigation of the crime of criminal

trespass in the second degree, which was committed in the officers' presence. RCW 9A.52.080; RCW 10.31.100; *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 760 (1991).

- c) Officers were aware of at least one gun in the Jeep, and they were concerned that there may be other weapons. When officers observed Doering making furtive movements toward the rear of the Jeep, officers were justified in conducting a pat-down search for weapons.

During the officers' initial contact with Doering and the driver of the Jeep, officers learned that there was a shotgun in the Jeep. RP 7. Officer Smith testified that in his "experience, most people that are in the woods and have shotguns have more than one weapon, be it a knife, a pistol, whatnot...." RP 7. So, Officer Smith got the driver out of the Jeep and patted him down for weapons. RP 7. Officer Smith testified as follows:

While I was doing that I noticed Ms. Doering reach back to the back of the vehicle, and at that time I told her to remain seating forward so I could see her hands. Knowing that there were tools, sharp objects and an aggressive pit bull, I wanted her hands to be in my view. And then walked over and asked Ms. Doering to step out and I patted her down for weapons. I wasn't sure what she was reaching for, did not know if she had any weapons. Like I said earlier, typically there's not just one weapon when I run into people in the woods. So then I patted her down for weapons and told her she was free to get in the vehicle to drive away.

State's Response Brief  
Case No. 45766-1-II

Mason County Prosecutor  
PO Box 639  
Shelton, WA 98584  
360-427-9670 ext. 417

RP 7-8. Officer Smith testified that he was concerned that he was concerned for his safety and that he was concerned that Doering may have been armed. RP 8.

“A nonconsensual ‘protective frisk for weapons’ is warranted when a ‘reasonable safety concern exists ... when an officer can point to “specific and articulable facts” which create an objectively reasonable belief that a suspect is “armed and presently dangerous.” ’ ” *State v. Harrington*, 167 Wn.2d 656, 667, 222 P.3d 92, 97 (2009), quoting *State v. Collins*, 121 Wn.2d 168, 173, 847 P.2d 919 (1993) (quoting *Terry*, 392 U.S. at 21–24, 88 S.Ct. 1868). The *Harrington* Court further explained that:

The officer need not be absolutely certain the individual is armed, only that a reasonably prudent person in the same circumstances would be warranted that their safety, or that of others, was in danger. *Id.* In *State v. Belieu*, 112 Wn.2d 587, 773 P.2d 46 (1989), we articulated the principle differently: “[C]ourts are reluctant to substitute their judgment for that of police officers in the field. ‘A *founded suspicion* is all that is necessary, *some basis from which the court can determine that the detention was not arbitrary or harassing.*’ ” *Id.* at 601–02, 773 P.2d 46, (first emphasis added) (quoting *Wilson v. Porter*, 361 F.2d 412, 415 (9th Cir.1966)). A nonconsensual investigative detention is a seizure, albeit a legal intrusion if proper safeguards are met. *See [State v.] Garvin*, 166 Wn.2d [242,] at 250, 207 P.3d 1266.

*State v. Harrington*, 167 Wn.2d 656, 667-68, 222 P.3d 92 (2009).

State’s Response Brief  
Case No. 45766-1-II

Mason County Prosecutor  
PO Box 639  
Shelton, WA 98584  
360-427-9670 ext. 417

In the instant case, officers interrupted Doering during the commission of a crime, trespassing, in a remote location. RP 4-6. Officers learned that there was at least one firearm, a shotgun, in the Jeep. RP 7. There were numerous items in the Jeep that could be used as weapons, there was an aggressive pit bull, and while Officer Smith patted down the driver for weapons, Doering made unexplained, furtive movements toward the back seat. RP 7-8. These facts give rise to a well-founded suspicion that Doering might be armed, and “a reasonably prudent person in the same circumstances would be warranted that their safety, or that of others, was in danger.” *Id.* at 668.

- 3) Evidence of possession of methamphetamine was discovered in open view from outside of the Jeep by looking through the windows.

Doering was lawfully detained for investigation or arrest for the crime of criminal trespass in the second degree. RCW 9A.52.080; RCW 10.31.100; *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 760 (1991); RP 4-6. During the detention, Officer Smith observed what he recognized to be a drug pipe and a bag of methamphetamine in open view in the Jeep

State's Response Brief  
Case No. 45766-1-II

Mason County Prosecutor  
PO Box 639  
Shelton, WA 98584  
360-427-9670 ext. 417

that Doering occupied. RP 8-10. Because the drugs were in open view, no search occurred here. *State v. Rose*, 128 Wn.2d 388, 392-99, 909 P.2d 280 (1996).

Officer Smith testified that from his “Miranda card” he read Miranda warnings to Doering when she was initially detained. RP 10-11. He also testified that after seeing the methamphetamine in open view, Officer Jewett read *Miranda* warnings to Doering from a form used in conjunction with a consent to search. RP 10-12; Pretrial Ex. 9. Officer Smith then identified Pretrial Exhibit 10, which is a consent to search form that Doering signed when she consented to a search of the Jeep so officers could recover the methamphetamine that was observed in open view. RP 12-13; Pretrial Ex. 10. The driver likewise consented. RP 12-13.

“One exception to the search warrant requirement is consent, which the State bears the burden of establishing.” *State v. Dancer*, 174 Wn. App. 666, 671, 300 P.3d 475 (2013) *review denied*, 179 Wn. 2d 1014, 318 P.3d 280 (2014), citing *State v. Khounvichai*, 149 Wn.2d 557, 562, 69 P.3d 862 (2003). On the facts of the instant case, the State has met its burden of establishing that Doering (and the driver of the Jeep) consented to a search of the Jeep. RP 10-13; PT Ex. 9; PT Ex. 10.

State’s Response Brief  
Case No. 45766-1-II

Mason County Prosecutor  
PO Box 639  
Shelton, WA 98584  
360-427-9670 ext. 417



D. CONCLUSION

Officers did not unlawfully seize Doering in this case. The officers knew Green Diamond 800 Road to be closed to the public during hours of darkness. Thus, when officers saw a Jeep Cherokee driving on the closed road during hours of darkness, the officers had probable cause to believe that the occupants of the vehicle were committing the crime of criminal trespass in the officers' presence. On these facts, the officers were justified in the initial seizure of the Jeep Cherokee and its occupants. And even if, unknown to the officers, there was hypothetically some chance that the road was open as an evacuation route at that time, the officers were nonetheless justified in executing a *Terry* stop of the Jeep in order to investigate their reasonable suspicion that the occupants were engaged in committing the crime of criminal trespass in the second degree.

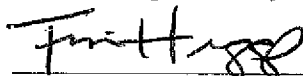
The officers did not unlawfully seize Doering by asking her for identifying information. Doering was not a mere passenger in a vehicle where the driver had been stopped for a traffic infraction. Instead, both Doering and the driver were individually engaged in the crime of trespass. Therefore, officers had an independent, lawful reason to request Doering's identifying information. In any event, no incriminating evidence flowed

from this request. Irrespective of whether officers asked her for identifying information, Doering was detained because she was trespassing.

Officers did not unlawfully seize Doering by conducting a pat-down search of her for weapons. Because the presence of one gun was confirmed in the Jeep, and because there were numerous other items that could be used as weapons and Doering was making furtive movements in the Jeep, the officers had a founded suspicion that she might be armed or that she was arming herself, and the circumstances warranted a reasonable concern for their safety.

DATED: September 3, 2014.

MICHAEL DORCY  
Mason County  
Prosecuting Attorney



Tim Higgs  
Deputy Prosecuting Attorney  
WSBA #25919

State's Response Brief  
Case No. 45766-1-II

Mason County Prosecutor  
PO Box 639  
Shelton, WA 98584  
360-427-9670 ext. 417

# MASON COUNTY PROSECUTOR

**September 03, 2014 - 4:51 PM**

## Transmittal Letter

Document Uploaded: 457661-Respondent's Brief.pdf

Case Name: State v. Debra Doering

Court of Appeals Case Number: 45766-1

**Is this a Personal Restraint Petition?** Yes ☐ No

### The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

☒ Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Tim J Higgs - Email: [timh@co.mason.wa.us](mailto:timh@co.mason.wa.us)

A copy of this document has been emailed to the following addresses:

[backlundmistry@gmail.com](mailto:backlundmistry@gmail.com)